

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

CHASE BORDEN,

Plaintiff,

vs.

**LIBERTY INSURANCE
CORPORATION,**

Defendant.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO.:

DEFENDANT'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §1446(a) and Local Rule CV-81(a), Defendant Liberty Insurance Corporation ("Liberty" or "Defendant"), files this Notice of Removal, hereby removing this action from the District Court, 401st Judicial District of Collin County, Texas to the United States District Court for the Eastern District of Texas, Sherman Division. Removal is based on diversity jurisdiction because there is complete diversity between Plaintiff Chase Borden ("Plaintiff") and Liberty, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In support of its Notice of Removal, Defendant would respectfully show the Court as follows:

I.

INTRODUCTION

This dispute arises from Plaintiff's claim for storm damage to his home land other property located at 2717 Gold Hill Drive, Wylie, Texas 75098 (the "Property"). Plaintiff alleges that Defendant breached a policy of insurance, and violated certain provisions of the Texas Insurance Code and Texas Deceptive Trade Practices Act ("DTPA") by, among other things, failing to pay Plaintiff's claim for damages resulting from an alleged storm.

On February 13, 2017, Plaintiff filed his Original Petition in the District Court, 401st Judicial District of Collin County, Texas. Liberty was personally served with a citation and a copy of Plaintiff's Original Petition on February 16, 2017 through its registered agent for service

of process. On March 10, 2017, Defendant timely filed an answer to Plaintiff's Original Petition. This Notice of Removal is being filed within thirty (30) days of service of the Petition, and is thus timely filed under 28 U.S.C. §1446(b).

II.

BASIS FOR REMOVAL

A. DIVERSITY OF CITIZENSHIP

Removal is proper because there is complete diversity between the parties. *See* 28 U.S.C. § 1332(a). Plaintiff is a resident and citizen of Texas. *See* Plaintiff's Original Petition, at ¶ 1. Liberty is a corporation organized under the laws of the State of Illinois with its principal place of business in Boston, Massachusetts. Accordingly, Defendant is an Illinois and Massachusetts citizen for diversity purposes. Accordingly, there exists complete diversity of citizenship between the parties.

B. AMOUNT IN CONTROVERSY

Generally, the amount in controversy for purposes of establishing federal jurisdiction should be determined by the plaintiff's complaint. *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1411-12 (5th Cir. 1995). Here, it is apparent from the face of Plaintiff's Original Petition that his claims exceed \$75,000.00. In paragraph 4 of the Petition, Plaintiff states: "Plaintiff currently seeks monetary relief over \$100,000, but not more than \$200,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorneys' fees." Plaintiff's Original Petition, at ¶ 4.

Therefore, removal of this action is proper under 28 U.S.C. § 1441(a). This is a civil action brought in state court, and this Court has original jurisdiction over the subject matter pursuant to 28 U.S.C. § 1332(a). In addition, Plaintiff's citizenship is diverse from Liberty. Finally, as alleged in his Petition, Plaintiff seeks to recover in excess of

\$100,000.00 from Defendant. Therefore, the amount in controversy in this case clearly exceeds \$75,000.00.

III.
CONSENT TO REMOVAL UNNECESSARY

Liberty is the only defendant named in Plaintiff's Petition. Thus, no additional consent is needed for removal

IV.
COMPLIANCE WITH PROCEDURAL REQUIREMENTS

As required by Local Rule CV-81, filed concurrently with this Notice of Removal is a completed civil cover sheet. Additionally, the following exhibits are attached:

- **EXHIBIT A:** Supplemental Civil Case Cover Sheet – listing all parties in this case and the current status of the state court proceeding; listing of attorneys in this case, including each such attorney's bar number, address, telephone number and party represented; and the name and address of the state court from which this case is being removed;
- **EXHIBIT B:** A certified copy of the Register of Actions in the state court action; and
- **EXHIBITS C-1 – C-2:** A copy of each document filed in the state court action.

Pursuant to Section 28 U.S.C. §1446(d), Defendant will give written notice of filing of this Notice of Removal to all adverse parties promptly after the filing of same.

Pursuant to 28 U.S.C. §1446(d), Defendant will file a true and correct copy of this Notice of Removal with the District Clerk, 401st Judicial District, Collin County, Texas promptly after filing of same.

V.
CONCLUSION AND PRAYER

Based on the foregoing, Defendant Liberty Insurance Corporation respectfully requests that the above-captioned action now pending in the District Court, 401st Judicial District, Collin

County, Texas be removed to the United States District Court for the Eastern District of Texas,
Sherman Division.

Respectfully submitted,

/s/ Mark D. Tillman

MARK D. TILLMAN
State Bar No. 00794742
ELIZABETH KNIGHT
State Bar No. 24065566

TILLMAN BATCHELOR LLP
1320 Greenway Drive, Suite 830
Irving, Texas 75038
Telephone: (214) 492-5720
Facsimile: (214) 492-5721
mark.tillman@tb-llp.com
elizabeth.knight@tb-llp.com

**ATTORNEYS FOR DEFENDANT
LIBERTY INSURANCE
CORPORATION**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been forwarded to Plaintiff's counsel of record via electronic means and/or facsimile, on the 13th day of March, 2017, in accordance with the FEDERAL RULES OF CIVIL PROCEDURE.

ATTORNEYS FOR PLAINTIFF

Richard D. Daly
TBA No. 00796429
William X. King
TBA No. 24072496
James Willis
TBA No. 24088654
DALY & BLACK PC
2211 Norfolk Street, Suite 800
Houston, Texas 77098
(713) 655-1405 (Telephone)
(713) 655-1587 (Facsimile)
rdaly@dalyblack.com
wking@dalyblack.com
jwillis@dalyblack.com

/s/ Mark D. Tillman
MARK D. TILLMAN